No. 23-12111

In the United States Court of Appeals
for the Eleventh Circuit

JOHN ANTHONY CASTRO,
Plaintiff - Appellant,

v.

DONALD J. TRUMP,
Defendant - Appellee.

APPEAL FORM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
ORIGINATING CIVIL CASE NO.: 23-CV-80015-AMC
Honorable Aileen M. Cannon, U.S. District Judge

APPELLANT'S OPENING BRIEF

Respectfully submitted:
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Appellant
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Pro Se

JOHN ANTHONY CASTRO,
APPELLANT

NO. 23-12111

v.

DONALD J. TRUMP,
APPELLEE.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT PER 11TH CIR. R. 28-1(b)

The undersigned counsel of record hereby certifies that the following listed persons and entities as described in 11th Cir. R. 28-1(b) have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Cannon, Aileen M., United States District Judge.
2. Castro, John Anthony, Plaintiff/Appellant.
3. Halligan, Lindsey R., Counsel for Appellee.
4. Smith, Jack, Special Counsel.
5. Trump, Donald J., Defendant/Appellee.

/s/ John Anthony Castro
John Anthony Castro

STATEMENT REGARDING ORAL ARGUMENT

Appellant John Anthony Castro respectfully requests oral argument pursuant to Fed. R. App. P. 34(a)(1) and 11th Cir. R. 28-1(c). Oral argument should be desired in this appellate case. Although the facts and legal arguments are adequately presented in the briefs and record, this Honorable Court of Appeals' decisional process would be significantly aided by oral argument to discuss the historical analysis of some of the facts and legal arguments, the intricacies and nuances of which may not be adequately presented in the brief or record.

Appellant, although proceeding *pro se*, holds two law degrees, a Master of Laws from Georgetown Law and a Juris Doctor from UNM Law. Appellant is also a distinguished alum of Harvard Business School, well-versed on the history of the issues presented on appeal before this Honorable Court of Appeals, and skilled in the art of respectful and intellectual oratory argumentation.

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STATEMENT OF SUBJECT-MATTER AND APPELLATE JURISDICTION

Jurisdiction for this civil action was proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1331 because Appellant John Anthony Castro's claim arose under Section 3 of the 14th Amendment to the United States Constitution.

The district court entered final judgment against Appellant as to all claims on June 26, 2023, on the basis he lacked standing. On June 26, 2023, Appellant filed a timely notice of appeal.

Jurisdiction in this Honorable Court of Appeals is proper under 28 U.S.C. §§ 1291 and 1294.

STATEMENT OF THE ISSUES

1. Does a political candidate have constitutional standing to challenge the eligibility of another political candidate who competes for the same nomination of the same political party to be that political party's nominee for the same political office based on a political competitive injury in the form a diminution of votes?

2. Can a judicial ruling of national importance implicating a politically controversial defendant that is universally condemned as biased and unanimously overturned by an appeals court as both unconstitutional and an abuse of discretion coupled with other highly questionable rulings in ongoing criminal proceedings of the same defendant collectively serve as evidence of deep-seated and unequivocal favoritism that makes a fair judgment impossible, satisfies the *Liteky* exception to the extrajudicial source doctrine, and makes disqualification mandatory under 28 U.S.C. § 455?

STATEMENT OF THE CASE

Course of Proceedings and Dispositions Relevant to Standing and Recusal

On January 6, 2023, Appellant John Anthony Castro, a 2024 Republican Presidential Candidate, filed a civil action against Appellee Donald J. Trump on the basis of a political competitive injury seeking a declaratory judgment that Appellee Trump is constitutionally ineligible to hold public office pursuant to Section 3 of the 14th Amendment for his aid and comfort to the convicted insurrectionists that violently attacked our United States Capitol on January 6, 2021. ECF 1, Compl.

On February 15, 2023, Appellant John Anthony Castro filed a Motion to Disqualify Judge Aileen Mercedes Cannon with an extensive factual analysis as well as legal analysis of 28 U.S.C. § 455. ECF 17, Mot. to Disq.

On February 15, 2023, Defendant Donald J. Trump filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim. ECF 18, MTD.

On February 16, 2023, Judge Aileen Mercedes Cannon issued a paperless order denying Appellant's Motion to Disqualify. ECF 19, Order Den. Mot. to Disq.

On February 28, 2023, Plaintiff filed his Response in Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim. ECF 26, Resp. in Opp'n to MTD.

On March 7, 2023, Defendant filed his Reply to the Response at which point the Motion to Dismiss was fully briefed. ECF 28, Reply to Resp. in Opp'n to MTD.

On May 22, 2023, Plaintiff filed a Motion for Ruling and to Expedite Consideration informing Judge Cannon of Plaintiff's intent to file a Writ of Mandamus if the Court continued to usurp federal judicial power by withholding consideration of ruling on the merits of the Motion to Dismiss. ECF 30, Mot. for Rul. and to Exp. Cons'n.

On June 6, 2023, Appellant John Anthony Castro filed a Petition for Writ of Mandamus with this Honorable Court of Appeals accusing Judge Aileen Mercedes Cannon of unconstitutionally usurping judicial power by unlawfully withholding ruling on the Motion to Dismiss for more than 90 days.

On June 26, 2023, Judge Aileen Mercedes Cannon, in a one-page document without a single legal citation or supporting legal analysis, dismissed Appellant John Anthony Castro's civil action against Appellee Donald J. Trump for lack of standing. ECF 32, Order Granting MTD.

Statement of the Facts Relevant to Injury

Appellant John Anthony Castro is an FEC-registered Republican presidential candidate actively pursuing the nomination of the Republican Party to pursue the Office of the Presidency of the United States. Appellee Donald J. Trump is an FEC-registered Republican presidential candidate actively pursuing the

nomination of the Republican Party to pursue the Office of the Presidency of the United States. Appellee Donald J. Trump is causing a political competitive injury upon Appellant John Anthony Castro in the form of diminution of potential votes, political support, and political campaign contributions.

On January 6, 2023, based on this competitive injury traceable to Appellee Donald J. Trump, Appellant John Anthony Castro commenced a civil action against Appellee Donald J. Trump to obtain a declaratory judgment regarding his eligibility to hold public office in the United States given his aid and comfort to the insurrectionists that violently attacked our United States Capitol on January 6, 2021, which results in disqualification to hold public office pursuant to the self-executing nature of Section 3 of the 14th Amendment to the United States Constitution.

Statement of the Facts Relevant to Partiality

Previously, on December 1, 2022, this Honorable Court had to reverse Judge Aileen Cannon in holding that the "law is clear. We cannot write a rule that allows any subject of a search warrant to block government investigations after the execution of the warrant. Nor can we write a rule that allows only former presidents to do so. Either approach would be a radical reordering of our caselaw limiting the federal courts' involvement in criminal investigations. And both would violate bedrock separation-of-powers limitations." *Trump v. U.S.*, 54 F.4th 689, 701 (11th Cir. 2022). Judge Aileen Cannon showed a willingness to abuse her discretion and

engage in unconstitutional obstruction of an ongoing criminal investigation that illustrated her deep-seated favoritism toward Appellee Trump.

The district court civil action that is the subject of this appeal was assigned to Judge Aileen Mercedes Cannon. Appellant John Anthony Castro filed a Motion to Disqualify Judge Aileen Cannon on the basis of her deep-seated favoritism of Appellee Trump that was evidenced by her abusive and unconstitutional interference in the criminal investigation of Appellee Trump. In less than 24 hours, Judge Aileen Cannon denied the Motion to Disqualify by paperless order without any factual or legal analysis to even argue that she was able to be impartial to give the appearance of not being partial toward Appellee Trump. The paperless order, in and of itself, illustrates the utter disregard Judge Aileen Cannon possesses for the need of the judiciary to, at the very least, *attempt* to demonstrate impartiality.

Judge Aileen Cannon took 92 days to rule on the Motion to Dismiss in this case and only did so after Appellant John Anthony Castro filed a Petition for Writ of Mandamus with this Court. However, after the federal indictment of Appellee Trump was unsealed, Judge Aileen Cannon scheduled the trial date to take place in 67 days on August 14, 2023. In doing so, Judge Aileen Cannon once again exhibited deep-seated and unequivocal favoritism toward Appellee Trump and a willingness to unconstitutionally usurp judicial power when it favors Appellee Trump yet expedite cases when it favors Appellee Trump.

Standard of Review

This Court reviews *de novo* an order dismissing a case for lack of standing. *See Scott v. Taylor*, 470 F.3d 1014, 1017 (11th Cir. 2006) (citing *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1351 (11th Cir. 2005)).

This Court reviews for abuse of discretion a district court's denial of a motion to recuse. *See U.S. v. Scrushy*, 721 F.3d 1288, 1303 (11th Cir. 2013) (citing *In re Walker*, 532 F.3d 1304, 1308 (11th Cir. 2008)). "***Any*** doubts must be resolved in favor of recusal." *U.S. v. Patti*, 337 F.3d 1317, 1321 (11th Cir. 2003); *also see U.S. v. Kelly*, 888 F.2d 732, 744 (11th Cir. 1989).

SUMMARY OF THE ARGUMENT

Because Appellant Castro directly competes with Appellee Trump for the 2024 Republican nomination for the Presidency of the United States, Appellant Castro has a ripe injury-in-fact in the form of diminution of political support traceable to the alleged unconstitutional candidacy of Appellee Trump that is redressable with the declaratory judgment Appellant Castro seeks. As such, Appellant Castro has standing to pursue his claims for relief against Appellee Trump.

The U.S. Supreme Court decision in *Liteky* created an exception to the extrajudicial source doctrine for situations when judicial rulings evidence deep-seated favoritism and/or unequivocal antagonism. U.S. District Judge Aileen Cannon's judicial rulings evidence deep-seated favoritism toward Appellee Trump and unequivocal antagonism toward any party whose position is against the interests of Appellee Trump. Because U.S. District Judge Aileen Cannon's impartiality might reasonably be questioned based on judicial rulings evidencing deep-seated favoritism, these doubts must be resolved in favor of recusal in all cases involving Appellee Trump.

ARGUMENT

I. PLAINTIFF HAS POLITICAL COMPETITOR STANDING GRANTING THE DISTRICT COURT SUBJECT MATTER JURISDICTION OVER THIS CASE

The Constitution limits the jurisdiction of the federal courts to actual cases or controversies.[1] "One element of the case-or-controversy requirement is that [plaintiffs], based on their complaint, must establish that they have standing to sue."[2] The doctrine of standing, "rooted in the traditional understanding of a case or controversy… developed… to ensure that federal courts do not exceed their authority as it has been traditionally understood."[3] "[T]he 'irreducible constitutional minimum' of standing consists of three elements."[4] The "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision."[5]

The United States Court of Appeals for the D.C. Circuit has recognized the concept of *Political Competitor Standing* on the basis that an injury would logically be diminution of votes traceable to the political competitor and redressable by a court.[6] Political Competitor Standing, however, is only available to plaintiffs who

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[1] U.S. Const. art. III, § 2, cl. 1, *see also Raines v. Byrd*, 521 U.S. 811, 818 (1997).
[2] *Raines*, 521 U.S. at 818.
[3] *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016).
[4] *Id*. (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).
[5] *Id*.
[6] *See Shays v. FEC*, 414 F.3d 76, 87 (D.C. Cir. 2005).

can show that they "personally compete[] in the same arena with the same party."[7] The D.C. Circuit has also held that if a plaintiff can show that he is a "direct and current competitor," then competitor standing must be recognized as a matter of law.[8] The federal judiciary has recognized that a candidate, as opposed to "individual voters and political action groups" would have "standing based upon a 'competitive injury'" if, again, the candidate can show that he "personally competes in the same arena with the same party."[9]

Appellant John Anthony Castro (hereinafter "Castro") is an FEC-registered 2024 Republican Presidential candidate and is currently directly competing against Appellee Donald John Trump (hereinafter "Trump") for the Republican nomination for the Presidency of the United States. As such, Castro has political competitor standing to bring this suit.

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[7] *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998) (internal quotation marks omitted); *see also Fulani v. Brady*, 935 F.2d 1324, 1327-28 (D.C. Cir. 1991) (holding that presidential candidate did not have "competitor standing" to challenge CPD's tax-exempt status where the candidate was not eligible for tax exempt status); *Hassan v. FEC*, 893 F. Supp. 2d 248, 255 (D.D.C. 2012), *aff'd*, No. 12-5335, 2013 WL 1164506 (D.C. Cir. 2013) ("Plaintiff cannot show that he personally competes in the same arena with candidates who receive funding under the Fund Act because he has not shown that he is or imminently will be eligible for that funding.").

[8] *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002)

[9] *Hassan*, 893 F. Supp. 2d at 255 n.6 (D.D.C. 2012) (emphases added) (quoting *Gottlieb*, 143 F.3d at 621)

A. Castro's Injury-in-Fact

To establish standing, a plaintiff must show that the plaintiff has suffered an "injury in fact caused by the challenged conduct [of the defendant] and redressable through relief sought from the court."[10]

Despite Castro's clear allegations contained in his complaint, the lower court presumably concluded, without any analysis whatsoever, that Castro has not established that he has suffered an injury-in-fact.

1. Diminution of Votes and/or Fundraising

Castro and Trump are not only competing for the same political position within the same political party but are also appealing to the same voter base. Castro retains support from unions and his extensive experiences with union organizing is appealing to working class Americans. Similarly, Trump also does not appeal to big donors and most of his donations consist of donors giving small amounts. Consequently, Castro will be primarily targeting the same voters as Trump, and Castro will allocate a significant portion of his campaign finances to such cause.

In fact, throughout his campaigning efforts to date, Castro has spoken to thousands of voters who have expressed that they would vote for Castro *only if* Trump is not a presidential candidate as they maintain political loyalty to Trump.

[10] *Shays*, 414 F.3d at 83 (internal citation omitted).

Trump did not refute that Castro will suffer an injury-in-fact based on a diminution of votes and political support. On this basis alone, an injury-in-fact has been not only established but conceded by Trump.[11]

A primary candidate has judicial standing to bring a claim challenging the eligibility of a fellow primary candidate for competitive injury in the form of a diminution of votes and/or fundraising if the primary candidate believes that the fellow primary candidate is ineligible to hold public office and to prevent actions irreconcilable with the U.S. Constitution.[12]

Castro will *further* suffer *irreparable* competitive injuries if Trump, who is constitutionally ineligible to hold office, is able to attempt to secure votes in primary elections and raise funds. Trump's constitutionally unauthorized undertaking will put Castro at both a voter and donor disadvantage.

Trump, without judicial relief to Castro, will siphon off votes in violation of Section 3 of the 14th Amendment to the U.S. Constitution.[13] In fact, Trump conceded in his motion to dismiss that there are only "162 Republican Party

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[11] *See Conforti v. Hanlon*, No. CV2008267ZNQTJB, 2022 WL 1744774, at *12 (D.N.J. May 31, 2022).
[12] *See Fulani*, 882 F.2d at 628.
[13] U.S. Const., amend. XIV, § 3 "No person shall be a[n]…elector of President…or hold any office… under the United States,…who,…shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."
[13] *See Fulani*, 882 F.2d at 628.

candidates" for the Presidency of the United States thereby identifying the actual named individuals with particularity that his candidacy is injuring.[14] By definition, this "particularizes" the injury.

2. Ripeness of the Injury

"If further factual development would help the court adjudicate the case, the case may be unripe and therefore nonjusticiable."[15]

Trump's argument that this action is not yet ripe is contradicted by his active campaigning to secure the support of voters and donors for his Presidential candidacy. Trump's argument that Castro fails to show ripeness of the injury can only be sustained if Trump were not actively campaigning. Like Castro, Trump is a declared candidate currently courting voters and seeking funds on his campaign website: www.DonaldJTrump.com. Castro also has an active campaign website: www.JohnCastro.com. Put plainly, Trump and Castro are both pursuing the same voter and donor pies, and Trump is currently taking a slices of the voter and donor pie that logically reduces the available pie left for Castro. The injury is factually

[14] *See* ECF 18, MTD p.12.

[15] *Abbot Labs. v. Gardner*, 387 U.S. 136 (1967). Within the Third Circuit, the Step-Saver Test is applied in declaratory judgment cases and looks to "(1) the adversity of the parties' interests, (2) the conclusiveness of the judgment, and (3) the utility of the judgment." *Step-Saver Data Sys., Lnc. v. Wyse Tech.*, 912 F.2d 643 (3d Cir. 1990); *see Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534, 539-540 (3d Cir. 2017).

real and presently happening at this very moment. We need not wait until voters actually cast their ballot since that would make the injury an irreparable harm, render those votes irrelevant, and possibly transform this controversy into a nonjusticiable political question.

Under the Declaratory Judgment Act, a case or controversy must exist at the time the declaratory judgment action is filed.[16] However, despite Castro evidencing the ripeness of this controversy, the Declaratory Judgment Act was designed to declare the rights and legal relations and issues between parties prior to ripeness and to assist the parties in determining possible options for redressability, if any.[17] The Declaratory Judgment Act is designed to enable courts to declare rights of adverse parties to lawsuit even though that suit may not have ripened to a point at which an affirmative remedy is needed.[18] As such, the standard for a judgment under the Declaratory Judgment Act is whether such judgment would *merely* be useful.[19]

A declaratory judgment is an opportunity for a party to determine the point at which a controversy would ripen in order to seek prompt resolution by a court rather than waiting for an opposing party with a ripe injury or controversy to sue,

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[16] *GTE Directories Pub. Corp. v. Trimen America, Inc*., 67 F.3d 1563 (11th Cir. 1995).
[17] 28 U.S.C. § 2201(a) ("[W]hether or not… relief… could be sought.")
[18] *Dayao v. Staley*, 303 F. Supp. 16 (S.D. Tex. 1969), *aff'd*, 424 F.2d 1131 (5th Cir. 1970)
[19] *Aaron Enterprises, Inc. v. Federal Insurance Company,* 415 F.Supp. 3d 595 (E.D. Pa. 2019).

particularly where delay in seeking judicial intervention will cause substantial prejudice to a declaratory judgment plaintiff.[20]

Castro intends to use this declaratory judgment to swiftly enjoin both Trump's submission of a ballot application as well as any state's acceptance of the ballot application.

The purpose of 28 U.S.C. § 2201(a) is to clarify rights and legal relations in actual controversies before they ripen into actual violations of law or unconstitutional conduct.[21] There are no further factual developments required. Castro is being politically injured, and the time has come for the federal judiciary to address this issue.

(a) Fitness of the Issue

(i) Plaintiff is a Bona Fide and Active 2024 Republican Presidential Candidate

The lower court presumably adopted Trump's characterization of the underlying civil action as a "publicity stunt" by Castro. Such an assertion can only be interpreted as Castro initiating an action either for an improper purpose or as a planned civil action having the effect of drawing the public's attention to Castro's

[20] *Great Am. Ins. Co. v. Houston Gen. Ins. Co.*, 735 F. Supp. 581 (S.D.N.Y. 1990)
[21] *Hardware Mut. Cas. Co. v. Schantz*, 178 F.2d 779, 780 (5th Cir. 1949), *see also United States v. Fisher-Otis Co.*, 496 F.2d 1146 (10th Cir. 1974), *see also Scott-Burr Stores Corp. v. Wilcox*, 194 F.2d 989 (5th Cir. 1952), *see also Gov't Emp. Ins. Co. v. LeBleu*, 272 F. Supp. 421 (E.D. La. 1967)

presidential campaign. Because the lower court neither received a request for sanctions nor imposed sanctions *sua sponte*, the characterization must be the latter.

Trump is effectively arguing that one of Castro's motivating factors for bringing this civil action is to draw the public's attention to Castro's Presidential campaign. While Castro is not denying that this action has the potential to elevate his political status, demonstrate his legal ingenuity, and display his executive leadership by single-handedly ending Trump's political career, Castro's sole motivation to bring this suit is to remedy an actual injury-in-fact.

Castro's 2024 Republican Presidential Campaign activities have included building a comprehensive campaign website, a campaign store with merchandise, campaign photo sessions to highlight public support for his candidacy, and a current effort to sell his tax software, AiTax, for an estimated $180 million to self-finance his Presidential campaign with $100 million of his own funds.

With regard to Castro's campaign website, it was originally designed as part of his 2020 Republican Primary Campaign for U.S. Senate against Senator John Cornyn (R-TX). Castro's campaign slogan at that time was "One America United." From the onset, Castro intended this Senate race to be a precursor to his 2024 Republican Presidential Campaign. As part of that campaign, Castro designed his campaign website, his campaign logo, and his campaign merchandise.

Castro ran again for U.S. Congress in 2021 with the unexpected death of Congressman Ron Wright. After that campaign ended, Castro was quoted in the Fort-Worth Star Telegram that Trump was a "false prophet" and that he would not support him.

On February 24, 2020, Forbes reported that "Mr. Castro is running for the Republican nomination to be the US Senator from Texas."[22]

On February 25, 2020, The Hill, a nationally recognized politically focused news agency, reported on Castro's 2020 Republican Senatorial Campaign and his efforts to get "Verified" on social media platform Twitter.[23]

On June 19, 2020, Vents Magazine covered "Republican Candidate John Anthony Castro" and his efforts to address police reform.[24]

On February 6, 2022, the Washington Post reported: "John Anthony Castro is a declared candidate for the Republican nomination" and discussed Castro's efforts to disqualify Trump.

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[22] See Peter J. Reily, Wrong Signature Voids Million-Dollar Plus Refund Claim, February 24, 2020, https://www.forbes.com/sites/peterjreilly/2020/02/24/wrong-signature-voids-million-plus-refund-claim/?sh=423bc0a44cf2

[23] See Emily Birnbaum and Chris Mills Rodrigo, Twitter falling short on pledge to verify primary candidates, February 25, 2020, https://thehill.com/policy/technology/484453-twitter-falling-short-on-pledge-to-verify-primary-candidates/

[24] See RJ Frometa, Republican Candidate John Anthony Castro Raises His Voice in Support of George Floyd Protesters, June 19, 2020, https://ventsmagazine.com/2020/06/19/republican-candidate-john-anthony-castro-raises-his-voice-in-support-of-george-floyd-protesters/

On May 28, 2022, Newsweek quoted John Anthony Castro and described him as "a Republican candidate who is running for president in 2024."[25]

On July 28, 2022, Newsweek quoted John Anthony Castro's ridicule of Elon Musk describing him as "Rocket Boy" and referred to Castro as "a Republican 2024 presidential candidate."[26]

On December 12, 2022, Newsweek mentioned John Anthony Castro and directly quoted his description as a "2024 Republican Presidential Candidate Suing Trump to Disqualify Him for January 6."[27]

Castro has been mentioned and/or covered in the Washington Post, Forbes, The Hill, and Newsweek regarding his Republican candidacy. In particular, the Washington Post and Newsweek have identified him as a 2024 Republican Presidential candidate. Castro's efforts to earn this media coverage demonstrate the seriousness with which he is pursuing the Presidency of the United States without regard to other self-serving interests, such as books deal, media deals, or cabinet

[25] See Xander Landen, Ron Johnson Takes Heat for Linking School Shootings to 'Wokeness',May 28, 2022, https://www.newsweek.com/ron-johnson-takes-heat-linking-school-shootings-wokeness-1711136

[26] See Alia Slisco, Elon Musk Ridiculed Over Twitter Deal Backtrack: 'Rocket Boy Taps Out', July 8, 2022, https://www.newsweek.com/elon-musk-ridiculed-over-twitter-deal-backtrack-rocket-boy-taps-out-1723122

[27] See Darragh Roche, Neil Gorsuch Just Said the Quiet Part Out Loud, December 28, 2022, https://www.newsweek.com/neil-gorsuch-quiet-part-out-loud-supreme-court-1769854

positions. Castro fully intends on being the President of the United States of America and Commander-in-Chief of the United States Armed Forces.

Lastly, Castro has already reached out and connected with New Hampshire and Iowa Republican Party leadership. Castro has also arranged for various trips to the state this summer to begin his grassroots door-to-door campaign, which will involve a novel and unique plan to build enough political support to have a break-out performance. While intense campaigning is not required to be recognized as a candidate, Castro nevertheless meets the standard of a very serious candidate who is genuinely pursuing the Republican nomination for the Presidency of the United States.

(ii) Not Remote or Abstract: The Competition for Voters and Donors Has Already Begun

This complaint is not remote or abstract. Both Castro and Trump are registered and declared candidates. Nikki Haley announced her Presidential campaign releasing only a website and a single campaign video. Castro, on the other hand, has been actively seeking to declare Trump constitutionally unqualified since early 2022 as Trump pointed out in his motion to dismiss.[28] In effect, Trump has admitted that Castro has been actively pursuing his legal strategy as part of his Presidential campaign for over a year now.

[28] *See* ECF 18, MTD pp. 5-6

Trump is clearly conflating active candidacy with ballot access while ignoring the fact that many states allow for write-in candidacies. Ballot access does not control the determination of whether an individual is a candidate. There are many examples of successful write-in candidacies by candidates who did not appear on the ballot. Castro has a campaign website, publicly declared his candidacy *before* Trump, has been actively campaigning for political support on social media, has been pursuing Trump's disqualification for over a year, and has been covered by the media for his pursuit of Trump's disqualification. Whether or not the lower court likes it, Castro is a current and active 2024 Republican Presidential candidate.

Furthermore, there is no basis for the lower court's presumed adoption of Trump's assertion that the U.S. Supreme Court case of *Golden v. Zwickler* analyzed whether an individual was a "bona fide political candidate" as Trump claimed in his motion to dismiss.[29] That is patently false and misleading. The U.S. Supreme Court case of *Golden v. Zwickler* involved a First Amendment challenge to a "state statute making it a crime to distribute anonymous literature in connection with an election campaign."[30] Because Mr. Zwickler had left Congress for a 14-year term as a State Supreme Court Justice, the U.S. Supreme Court concluded that the fact that "it was most unlikely that the [former] Congressman would again be a candidate for

[29] *See* ECF 18, MTD p. 11
[30] *Golden v. Zwickler*, 394 U.S. 103, 109 (1969).

Congress precluded a finding that there was 'sufficient immediacy and reality' here" regarding the risk of criminal prosecution for future violations.[31] This case actually highlights the importance of hearing this case now since, by the time is reaches the U.S. Supreme Court, the issue could be moot as it was in *Golden v. Zwickler*.

(b) Threat of Severe Hardship if Judgment Withheld

A lack of court intervention would result in an irretrievable loss of both votes and donor funds. Castro has been and *presently is* being harmed by Trump's actions. As such, relief at later time would not compensate Castro for his competitive injuries in the form of diminution of votes and funds.[32] Both issues must be properly considered in determining the ripeness of this controversy.[33] There is no mechanism to redistribute cast primary ballots or refund political contributions that donors make to Trump in order to make those votes and funds available to eligible candidates. Cash is an inherently finite and limited resource. As such, once those voters have cast their ballots and/or donors have given their available dollars to an ineligible candidate, they are forever lost.

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[31] *Id*.
[32] *Massachusetts L. Reform Inst. v. Legal Servs. Corp*., 581 F. Supp. 1179, 1187 - 1188 (D.D.C. 1984), *aff'd sub nom*., 737 F.2d 1206 (D.C. Cir. 1984)
[33] *Art-Metal-USA, Inc. v. Solomon*, 473 F. Supp. 1 (D.D.C. 1978)

When an individual has no other opportunity to pursue judicial review, there is irreparable harm.[34]

Additionally, the federal court is the appropriate judiciary; Castro cannot pursue judicial review of the competitive injury in the form of diminution of votes and funds at the state level because the injury stems from Trump's ineligibility pursuant to Section 3 of the 14th Amendment, which is a federal question removable to and/or reversible by a federal court. Hence, Castro seeks a declaratory judgment now in aid of future litigation, including, but not limited to, state-level litigation to avoid the inevitable appeal and/or removal to the federal judiciary that would delay a final judgment until after the primary elections.

While the mere presence of a constitutional question is not *de jure* irreparable harm, the controversy is ripe for judicial action if it causes an injury to an individual, is within the zone of interests sought to be protected by a constitutional provision, is based on a lack of alternative and timely remedies, and threatens the loss of votes and donors.[35]

[34] *Doe v. Mattis*, 928 F.3d 1 (D.C. Cir. 2019)
[35] *Hum. Res. Mgmt., Inc. v. Weaver*, 442 F. Supp. 241 (D.D.C. 1977).

(i) Withholding consideration would result in Plaintiff losing voters and donors to a constitutionally ineligible candidate.

In *Tiktok v. Trump*, the D.C. District Court held that an *irreparable* competitive injury will be found if the alleged misconduct pushes monetizable individuals to alternative options because those individuals are unlikely to return after they have chosen another option, which results in an eroding of a competitive position.[36]

Here, the fact pattern is legally identical: Castro declared his candidacy before Trump and is now losing potential supporters and donors to Trump, which is eroding his competitive position as those potential supporters and donors would be unlikely to ever return unless Trump was no longer a candidate.

(ii) Withholding consideration would risk the controversy not being timely addressed by the U.S. Supreme Court before the primary elections thereby mooting the issue and forever denying Plaintiff any relief and redressability.

Where there could be no redress after a coming deadline, there will be a finding of irreparable harm.[37] Here, any delay risks this injury becoming irreparable and possibly mooting or transforming the case into a non-justiciable political

[36] *TikTok Inc. v. Trump*, 507 F.Supp. 3d 92 (D.D.C. 2020).
[37] *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1 (D.C. Cir. 2016)

question as the 2024 Presidential Election nears closer. It is prudent to address these issues early, and now is the appropriate time.

The risk of violating the U.S. Constitution and the fact that there could be no do-over or redress once the election has begun is sufficient to establish a ripeness of the controversy, a justiciable injury-in-fact, and the very real threat of irreparable harm by erosion of competitive position.[38]

This case will involve inevitable appeals. Castro cannot wait until late 2023 when both Castro and Trump are state-registered candidates because that would guarantee that the injury would become irreparable, possibly moot the case, possibly transforms the case into a non-justiciable political question, or expose the Republican Party to irreparable harm as they could lose their party's presumptive or actual nominee after millions of Americans cast their ballots in the primaries. Delaying judicial review of these questions would be a constitutional crisis of the federal judiciary's own making. Castro implores the federal judiciary to avoid unintentionally engineering a crisis. If the federal judiciary addressed these issues now via the Declaratory Judgments Act, the Republican Party would have time to recover by funding, supporting, and nominating a constitutionally eligible candidate.

[38] *Richardson v. Trump*, 496 F. Supp. 3d 165 (D.D.C. 2020).

(iii) Withholding consideration would compel Plaintiff to Invest Millions of his own funds to campaign with lower odds of success

Withholding consideration at this stage would compel Castro to spend millions of dollars of his own funds to continue being competitively injured and to compete against a constitutionally unqualified and ineligible candidate with much lower odds of success. For that reason, it is prudent for the federal judiciary to exercise its jurisdiction and consider these matters now.

3. Plaintiff is Within the Zone of Interests Sought to Be Protected

Section 3 of the 14th Amendment protects a person from having to politically compete against a pro-insurrectionist politician. This is a federally protected interest under Section 3 of the 14th Amendment.

Section 3 of the 14th Amendment was specifically designed to ensure that non-insurrectionists did not have to politically compete with the more politically popular pro-insurrectionist politicians in the South. The framers of Section 3 of the 14th Amendment specifically designed it to remove overwhelming popular pro-insurrectionists from the ballot. As such, Castro is not simply within the "zone" of interests; Castro is the precise type of person that the framers of Section 3 of the 14th Amendment specifically sought to politically protect while Trump is the precise type of person they sought to disqualify.

Although the U.S. Supreme Court arguably abolished the doctrine of prudential standing in *Lexmark*,[39] Castro satisfies prudential standing in that his injury is particularized and concrete, he satisfies Article III standing (injury, traceability, and redressability), and he is within the zone of interests sought to be protected by Section 3 of the 14th Amendment to the U.S. Constitution.[40]

B. Traceability

1. Plaintiff's Injury to Traceable to Defendant's Unconstitutional Candidacy

It is undisputed that Castro's injury-in-fact is traceable to Trump.

C. Redressability

"Plaintiffs need not prove that granting the requested relief is certain to redress their injury, especially where some uncertainty is inevitable."[41] Nevertheless, the "Declaratory Judgment Act created… a new remedy."[42] The following are the more definitive statements on the precise types of declaratory relief Castro seeks:

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[39] *Lexmark Int'l, Inc. v. Static Control Components, Inc*., 572 U.S. 118 (2014)
[40] *Public Citizen v. FEC*, 788 F.3d 312 (D.C. Cir. 2015).
[41] *Competitive Enter. Inst. v. NHTSA*, 901 F.2d 107, 118 (D.C. Cir. 1990).
[42] *Walker Process Equip., Inc. v. FMC Corp*., 356 F.2d 449, 451 (7th Cir. 1966); also see *Nat'l Cancer Hosp. of Am. v. Webster*, 251 F.2d 466 (2d Cir. 1958); *Aralac, Inc. v. Hat Corp. of Am.*, 166 F.2d 286, 290 (3d Cir. 1948).

1. Federal Question Being Answered is a Prerequisite to Relief

Whether Trump's actions, words, and/or conduct with regard to the January 6, 2021, insurrectionary attack on the United States Capitol rise to the level of providing "aid or comfort" to the insurrection is a question of federal law. Before Castro can pursue any relief, this federal question must be answered. The process by which that question is answered can be had through the Declaratory Judgments Act. A declaratory judgment would answer all of these questions and clarify the rights and legal relations between Castro and Trump.[43]

2. Declaratory Judgments are the Remedies that Would Redress Plaintiff's Injury by Aiding in the Removal of an Unconstitutional and Disqualified Political Competitor

Castro provides the following more definitive statements on his claims upon which relief can be granted:

[43] *See McGraw-Edison Co. v. Preformed Line Prod. Co*., 362 F.2d 339, 342 (9th Cir. 1966) ("The purpose of the Declaratory Judgment Act is to afford an added remedy to one who is uncertain of his rights and who desires an early adjudication thereof without having to wait until his adversary should decide to bring suit, and to act at his peril in the interim.'"); *also see Duggins v. Hunt*, 323 F.2d 746, 748 (10th Cir. 1963) ("The general purpose of the Declaratory Judgment Act… is to provide an immediate forum for the adjudication of rights and obligations in actual controversy where such controversy may be settled in its entirety and with expediency and economy.").

(a) Declaration Whether Trump Provided Aid or Comfort to Insurrectionists

Pursuant to 28 U.S.C. § 2201(a), a Court "may declare the rights and other legal relations of" Castro and Trump, including whether Trump is constitutionally eligible to pursue and/or hold the Office of the Presidency of the United States on the factual assertion that he provided aid or comfort to the January 6 Insurrectionists.

(b) If Trump was Found to Have Provided Aid or Comfort to the Insurrection, Could Trump be Enjoined from Campaigning as that Would Be Knowingly Fraudulent Misrepresentation

Pursuant to 28 U.S.C. § 2201(a), a Court "may declare" whether, if Trump was found to have provided aid or comfort to the January 6 Insurrectionists, Castro has the legal right to enjoin Trump from campaigning for the Presidency since that would violate Section 3 of the 14th Amendment, FECA, and/or constitute knowingly fraudulent misrepresentation regarding eligibility.

(c) If Trump was Found to Have Provided Aid or Comfort to the Insurrection, Could Trump Be Enjoined from the Unconstitutional Act of Submitting a State Ballot Access Application

Pursuant to 28 U.S.C. § 2201(a), Castro asked the lower Court to "declare the rights" of Castro as to whether he can secure an injunction to prevent the unconstitutional act of Trump submitting a state ballot access application. In other words, whether the Court can issue an injunction preventing Trump from engaging in the unconstitutional act of submitting a state ballot access application since that

would be violative of his disqualification from public office pursuant to Section 3 of the 14th Amendment.

(d) If Trump was Found to Have Provided Aid or Comfort to the Insurrection, Could the Declaratory Judgment Permit State-Level Enforcement to Enjoin State Election Authorities from Accepting the Ballot Application

Pursuant to 28 U.S.C. § 2201(a), Castro asked the lower Court to "declare the rights" of Castro as to whether he has standing and the right to secure an injunction to prevent individual state election authorities from accepting and processing Trump's state ballot access application.

(e) Does Plaintiff Have Standing to Enjoin the Republican Party from Nominating Trump

Pursuant to 28 U.S.C. § 2201(a), Castro asked the lower Court to "declare the rights" of Castro as to whether he would have standing and the right to secure an injunction against the Republican Party to prevent his formal nomination at the Republican National Convention if Trump won the primary election.

(f) Alternatively, as a Write-In General Election Candidate, Does Plaintiff Have Standing to Enjoin Trump's Inauguration

Pursuant to 28 U.S.C. § 2201(a), Castro asked the lower Court to "declare the rights" of Castro as to whether he, having declared and verified his intention to be a write-in candidate for the general election if he is unsuccessful in securing the nomination of the Republican Party, would have standing and the right to secure an

injunction against the Joint Congressional Committee on Inaugural Ceremonies preventing the inauguration of Trump if Trump won the general election.

(g) Lastly, Declaratory Relief Act Relaxes Redressability Analysis

The Declaratory Judgment Act does not even require that relief could be sought. Pursuant to 28 U.S.C. § 2201(a), a Court "may declare the rights and other legal relations of" Castro and Trump on "whether or not further relief is or *could be sought*." The key phrase here is "whether or not further relief… *could* be sought." According to 28 U.S.C. § 2201(a), it is not required that relief could be sought at the time of the filing. A Court can still "declare the rights" of Castro and Trump, including their "legal relations," such as the constitutional disqualification of Trump and Castro's standing to disqualify Trump from pursuing and/or holding public office.

In essence, the redressability inquiry is relaxed because the declaratory judgments are the redressable relief that would remedy Castro's injuries.

(h) Closing

Based on all of the foregoing, Castro has constitutional standing to pursue this civil action. And by implication of redressability, Castro has stated claims upon which relief can be granted.

II. JUDGE AILEEN CANNON MUST BE DISQUALIFIED FROM ANY AND ALL TRUMP-RELATED CASES

A. The U.S. Supreme Court Reserved an Exception to the *Liteky* Extrajudicial Source Doctrine When There is Evidence of Deep-Seated Favoritism

There has been much confusion, misinterpretation, and misapplication of the Extrajudicial Source Doctrine. In *Liteky v. U.S.*, the United States Supreme Court explained that "judicial rulings alone ***almost*** never constitute valid basis for a bias or partiality recusal motion… Apart from surrounding comments or accompanying opinion, they cannot possibly show reliance on an extrajudicial source; and, absent such reliance, they ***require recusal*** only ***when they evidence such deep-seated favoritism or antagonism as would make fair judgment impossible***." *Liteky v. U.S.*, 510 U.S. 540, 541 (1994).

As it is clear from the U.S. Supreme Court's ruling in *Liteky*, there is an exception to the extrajudicial source doctrine for situations where a judge's rulings with regard to a specific defendant evidence deep-seated favoritism that make fair and impartial judgment impossible.

B. Judge Cannon's Impartiality Can Be Reasonably Questioned Based on Obvious Deep-Seated and Unequivocal Favoritism

Judge Aileen Cannon's intervention in the criminal investigation of former President Donald J. Trump was widely criticized by objective, disinterested, fully informed legal scholars as an unprecedented encroachment of the federal judiciary

upon the independence of criminal investigations led by agencies of the executive branch.

Moreover, it resulted in numerous ethics complaints being filed against Judge Aileen Cannon who is fully aware of the public backlash. Although the judicial complaints were ultimately dismissed, there remains widespread doubt in the general public regarding Judge Aileen Cannon's impartiality with regard to matters involving former President Donald J. Trump, especially amongst those that are truly objective, disinterested, lay, and fully informed.

This Honorable Court of Appeals ultimately overturned Judge Aileen Cannon's ruling and held that the "law is clear. We cannot write a rule that allows any subject of a search warrant to block government investigations after the execution of the warrant. Nor can we write a rule that allows only former presidents to do so. Either approach would be a radical reordering of our caselaw limiting the federal courts' involvement in criminal investigations. And both would violate bedrock separation-of-powers limitations."[44]

This Honorable Court of Appeals could not have been more clear: Judge Aileen Cannon disregarded nearly 80 years of established case law, including decisions from the U.S. Supreme Court, which she knew was the Supreme Law of the Land for which she had no reasonable basis in law to disregard.

[44] *Trump v. U.S.*, 54 F.4th 689, 701 (11th Cir. 2022).

Judge Aileen Cannon abused her discretion in an attempt to unconstitutionally interfere in the federal criminal investigation of a particular defendant. Her actions were unlawful and irreconcilable with nearly a century of established case law.

Judge Aileen Cannon showed a willingness to abuse her discretion and engage in unconstitutional interference of an ongoing criminal investigation that illustrated her deep-seated favoritism toward Appellee Trump.

Moreover, the district court civil action that is the subject of this appeal was assigned to Judge Aileen Mercedes Cannon. Appellant John Anthony Castro filed a Motion to Disqualify Judge Aileen Cannon on the basis of her deep-seated favoritism of Appellee Trump that was evidenced by her abusive and unconstitutional interference in the criminal investigation of Appellee Trump. In less than 24 hours, Judge Aileen Cannon denied the Motion to Disqualify by paperless order without any factual or legal analysis to even argue that she was able to be impartial to give the appearance of not being partial toward Appellee Trump. The paperless order, in and of itself, illustrates the utter disregard Judge Aileen Cannon possesses for the need of the judiciary to, at the very least, *attempt* to demonstrate impartiality.

Judge Aileen Cannon took 92 days to rule on the Motion to Dismiss in this case and only did so after Appellant John Anthony Castro filed a Petition for Writ of Mandamus with this Court. However, after the federal indictment of Appellee

Trump was unsealed, Judge Aileen Cannon scheduled the trial date to take place in 67 days on August 14, 2023. In doing so, Judge Aileen Cannon once again exhibited deep-seated and unequivocal favoritism toward Appellee Trump and a willingness to unconstitutionally usurp judicial power when it favors Appellee Trump yet expedite cases when it favors Appellee Trump.

C. Because There are Doubts Regarding Impartiality based on the Totality of Circumstances, Disqualification is Mandatory

This Honorable Court of Appeals has, on ten separate occasions, expressly held that "***any*** doubts ***must*** be resolved in favor of recusal."[45] The U.S. Supreme Court has also observed that "federal statutes have ***compelled*** district judges to recuse themselves" in specific situations identified by Congress.[46] In other words, the U.S. Supreme Court has held that this is not a matter of judicial discretion while this Honorable Court of Appeals has held that any doubt must be resolved in favor of recusal.

The standard of review for a district court on a motion for recusal based on appearance of partiality is whether an objective, disinterested, lay observer, fully informed of the facts underlying the grounds on which recusal was sought, would entertain a significant doubt about the judge's impartiality; the standard is, thus, an

[45] *U.S. v. Patti*, 337 F.3d 1317, 1321 (11th Cir. 2003).
[46] *Liteky v. U.S.*, 510 U.S. 540, 544 (1994)

objective one designed to promote the public's confidence in the impartiality and integrity of the federal judiciary.[47]

The decision whether a judge's impartiality can *reasonably* be questioned, for the purpose a motion to recuse, is to be made in light of the facts as they existed; not as they were surmised or reported by the media.[48] In other words, subjective media assumptions, hyperbole, hysteria, and exaggerations are disregarded.

The recusal inquiry for a judge based upon perceived lack of impartiality must be made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.[49]

A district court judge's refusal to recuse himself on the grounds that an objective lay observer fully informed of the facts would entertain a significant doubt about the judge's impartiality is subject to review for abuse of discretion.[50]

D. Additional Considerations

Although a judge's rulings alone *generally* do not establish bias or the perception of partiality, this is one of those rare cases in which it does. In this case, Judge Aileen Cannon's abusive, unlawful, and unconstitutional attempt to obstruct

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[47] *See U.S. v. Scrushy*, 721 F.3d 1288 (11th Cir. 2013).
[48] *See Cheney v. U.S. Dist. Ct. for D.C.*, 541 U.S. 913 (2004).
[49] *Id.*
[50] *Diversified Numismatics, Inc. v. City of Orlando, FL.*, 949 F.2d 382 (11th Cir. 1991).

the criminal investigation into former President Donald J. Trump led widespread public perception that Judge Aileen Cannon is incapable of impartiality with matters involving former President Donald J. Trump.

Inasmuch as "appearance of partiality" may vary from district to district, it would seem appropriate to apply a "community standard" to questions regarding whether a judge should recuse herself for reason that her "impartiality might reasonably be questioned."[51]

In this case, if we apply the community standard, it would be indisputable that Judge Aileen Cannon's impartiality can reasonably be questioned in this case. In fact, the more objective, disinterested, and informed the person is, the more likely the person would have significant doubt as to Judge Aileen Cannon's impartiality.

The recusal standard for a judge, whether his impartiality might reasonably be questioned, is one of reasonableness and should not be interpreted to mandatorily require recusal based upon spurious or vague charges of partiality.[52]

In this case, the Motion to Recuse is not based on spurious or vague accusations. Legal experts, constitutional scholars, and the U.S. Court of Appeals for the Eleventh Circuit all concluded that Judge Aileen Cannon abused her

[51] *Smith v. Pepsico, Inc.*, 434 F. Supp. 524, 526 (S.D. Fla. 1977).
[52] *Smith v. Pepsico, Inc.*, 434 F. Supp. 524 (S.D. Fla. 1977).

discretion and violated the United States Constitution's limitations on separation of powers when she engaged in a novel form of obstruction of justice. The vast majority of objective, disinterested, lay yet fully informed observers would have significant doubt regarding Judge Aileen Cannon's impartiality.

A violation of the statute requiring a judge to recuse herself in any proceeding in which her impartiality might reasonably be questioned is established when a reasonable person, knowing the relevant facts, would expect that the judge knew circumstances creating an appearance of partiality, notwithstanding finding that the judge was not actually conscious of those circumstances.[53] Furthermore, failure to recuse may warrant relief from final judgment.[54]

In this case, although it is not necessary, Judge Aileen Cannon was the subject of numerous ethics complaints regarding her abusive, unlawful, and unconstitutional attempt to obstruct the criminal investigation into Donald J. Trump.

The recusal statute "is violated if the general public could reasonably believe… that there would be an appearance of impropriety."[55]

Scienter is not required in order to find violation of statue requiring judge to recuse herself if impartially might reasonably be questioned. *Id*.

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[53] *Liljeberg v. Health Servs. Acquisition Corp*., 486 U.S. 847 (1988)
[54] *Id*.
[55] *See U.S. v. Garrudo*, 869 F. Supp. 1574 (S.D. Fla. 1994), *aff'd sub nom*. 139 F.3d 847 (11th Cir. 1998), *reh'g granted and opinion vacated*, 161 F.3d 652 (11th Cir. 1998), *and on reh'g*, 172 F.3d 806 (11th Cir. 1999), *cert. denied* 528 U.S. 985.

A judge was found to be disqualified from sitting on postconviction matters concerning criminal defendant where a reasonable person in the street would harbor doubts as to the judge's impartiality to sit on such matters since defendant had expressed hostility toward the judge despite the fact that the judge denied any personal bias or prejudice.[56]

In this case, Plaintiff John Anthony Castro has publicly accused Judge Aileen Cannon of being "corrupt" for her abusive, unlawful, and unconstitutional attempt to obstruct the criminal investigation of former President Donald J. Trump.

E. Closing

The federal judiciary must acknowledge the obvious deep-seated and unequivocal favoritism that Judge Aileen Cannon is showing toward Appellee Trump in all of his cases and restore public confidence in the independence and integrity of the federal judiciary by disqualifying United States District Court Judge Aileen Mercedes Cannon from any and all Trump-related cases.

CONCLUSION

The judgment below should be vacated, Judge Aileen Cannon declared disqualified in this case, and the case remanded for trial.

[56] *U.S. v. Cerrella*, 529 F. Supp. 1373 (S.D. Fla. 1982).

Respectfully submitted,

Dated: July 14, 2023

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CERTIFICATE OF COMPLIANCE

1. I certify that this filing complies with the type-volume limitations of the Fed. R. App. P. 32(a)(7)(B) because, excluding the parts exempted by the Fed. R. App. P. 32(f), the Brief contains 8,079 words.

2. I also certify that this filing complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, a true and accurate copy of the foregoing Opening Brief with accompanying attachments (if any) was electronically filed. It is further certified that all other parties are CM/ECF users and that service of this motion was made on Appellee via CM/ECF.

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